In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-660

WILLIAM F. WILLOUGHBY, PETITIONER

v.

H. GUYFORD STEVER, DIRECTOR OF THE NATIONAL SCIENCE FOUNDATION

AND

FRED BETZ, DALE ATKINS, JOSEPH COORS, BYRON JOHNSON, HARRY CARLSON, ROBERT GILBERT, AS THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

---

1. Petitioner brought suit against the Director of the National Science Foundation and members of the Board of Regents of the University of Colorado to enjoin implementation of the National Science Foundation Act of 1950, 64 Stat. 149, as amended, 42 U.S.C. 1861-1875, and to require respondents to withdraw from publication a series of biology textbooks. The books were prepared by the Biological Sciences Curriculum Study (BSCS), a private organization, through a grant to the University of Colorado by the National Science Foundation. Petitioner alleges that these books present Darwin's theory of evolution as "the only credible explanation of the origin

of man"; that this theory is contrary to petitioner's religious belief in the "creation theory"; and that presentation of the theory of evolution constitutes a violation of the First Amendment. Petitioner asserts that the National Science Foundation could not constitutionally provide any assistance to the publication of the textbooks.

The district court granted respondents' motions to dismiss, holding that under the four tests enunciated in *Tilton* v. *Richardson,* 403 U.S. 672, 678, neither the National Science Foundation Act nor its implementation by respondents was in conflict with the First Amendment (Supp. Pet. App. A1-A6). The court of appeals affirmed *per curiam* (Supp. Pet. App. Exhibit B).

2. The decision of the court below is correct and no issue warranting further review is presented.

Funding of the textbooks by the National Science Foundation is authorized by 42 U.S.C. 1862. *Tilton* v. *Richardson, supra,* sets out four criteria to consider to determine whether a statute is in conflict with the First Amendment:

> First, does the Act reflect a secular legislative purpose? Second, is the primary effect of the Act to advance or inhibit religion? Third, does the administration of the Act foster an excessive government entanglement with religion? Fourth, does the implementation of the Act inhibit the free exercise of religion? [403 U.S. at 678.]

Under these criteria, there has been no violation of the First Amendment in this case.

First, the purposes of the National Science Foundation Act and of the BSCS are purely secular. 42 U.S.C. 1862(a)(1) sets out the purpose of the National Science Foundation:

> [T]o initiate and support basic scientific research and programs to strengthen scientific research potential in the mathematical, physical, medical, biological, engineering, social and other sciences, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific activities and to appraise the impact of research upon industrial development and upon the general welfare.

The court found that BSCS was funded by the National Science Foundation in accordance with this announced statutory goal of "strengthen[ing] scientific research potential in the * * * biological * * * sciences."

Second, the primary effect of the Act is neither to advance or inhibit religion. The primary effect of presenting the theory of evolution in a biology textbook is neither to inhibit nor advance religion, but rather to present scientific knowledge and theories to students. Any incidental effect on religion in such a situation is constitutionally permissible. See *McGowan* v. *Maryland,* 366 U.S. 420, 442; *Two Guys* v. *McGinley,* 366 U.S. 582.

Third, this case does not involve excessive entanglement with religion. Indeed, none was alleged in connection with Foundation funding of the BSCS program. The statute imposes no religious requirements, and the content of funded publications is not subjected to any religious test.

Finally, implementation of the Act does not inhibit the free exercise of religion. Plaintiff alleges no coercion to influence the practice or exercise of his religious beliefs, but alleges only that he must pay taxes which are used to disseminate a theory which is counter to his religious be-

liefs. This is not sufficient to support a claim of inhibition of the free exercise of religion. See *Tilton* v. *Richardson, supra,* 403 U.S. at 689.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JOSEPH D. BUSCHER,
Counsel for the Board of Regents of the University of Colorado.

JANUARY 1975.